IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.448 OF 2006

Catarina Fernandes,
House No.263/1, Ward No.9,
Palolem, Canacona, Goa. .... Petitioner.

Versus

1. Mario Do Socorro Hilario Rebello,
   Business, son of Roque P. Rebello,
   House No.247, Ward No.9,
   Palolem, Canacona, Goa.

2. Canacona Municipal Council,
   Through its Chief Officer,
   Chaudi, Canacona, Goa. .... Respondents.

Mr. C. Mascarenhas, Advocate for the petitioner.

Mr. P. A. Kamat, Advocate for the respondent no.1.

Coram:- J.N. PATEL, J.

Date:- 29th November, 2006.

ORAL JUDGMENT:

Rule returnable forthwith.

2. Heard the learned Counsel for the parties.

3. The petitioner impugnes the order passed by the learned Trial Court in rejecting the application for amendment and so also the application for review for the said purpose. The petitioner who is the original plaintiff sought amendment of the plaint so as to include certain pleadings and the prayer clause for seeking comprehensive relief in the matter. The same was objected

by the defendants. The learned Trial Court found that the objection by the defendant was on the ground that the amendment now sought was founded on the pleadings and is not necessary to decide the real controversy between the parties, but only with the object to harass the defendant by increasing the valuation of the suit with an intention to get the suit transferred.

4. The learned Trial Court found that as the proposed amendment was within the knowledge of the plaintiff at the time of filing the suit, the plaintiff has failed to include these pleadings and therefore was not diligent enough. Further it does not comply with the mandatory requirement of proviso to Order VI Rule 17. Hence cannot be allowed.

5. The petitioner sought review of this said order. The same also came to be rejected which is now the subject matter of challenge in this petition.

6. The learned Trial Court while disposing of the review application did observe by placing reliance on authority in the case of ***Uday Shanker Troyar Vs. Ram Kalewar Prasad Singh and another 2005 AIR SCW 5851***, but inspite of that, the Trial Court was of the opinion that this does not enable the plaintiff to seek review of the order. This only indicates that the Trial Court has failed to consider the application for review in proper prospective.

7. The nature of amendment sought for by the petitioner/plaintiff does not in any manner prejudice the case of the respondent/defendant. There is no legal justification as to why the application ought not to be allowed if the Trial Court

was of the view that it is belated in nature, it could have compensated the defendants by awarding costs. In so far as the reasons for rejecting the application for amendment, that the proposed amendment/pleadings are not material to decide the suit, is not at all relevant for considering whether the amendment should be allowed or not. The Trial Court held that though the plaintiff was aware of the existence of the facts, at the time of filing of the suit, he did not incorporate in his pleading by itself does not debar the petitioner/plaintiff from seeking amendment at a subsequent stage.

8. Therefore in the facts and circumstances the impugned order is quashed and set aside. The application of the petitioner/plaintiff for seeking amendment is allowed. The petitioner/plaintiff to carry out amendment within a period of two weeks from 18.12.2006, on which date the parties are directed to appear before the Trial Court in the morning session. The petition is allowed in the aforesaid terms, subject to costs of Rs.1,000/- to be paid to the respondent/defendant on or before 18.12.2006 by depositing the same in the Trial Court.

9. Rule is made absolute in aforesaid terms.

J.N. PATEL, J.

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